

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

RICHARD L. ZAHN, M.D.

Case No. 800-2018-043774

**Physician's and Surgeon's
Certificate No. C 26179**

Respondent

DECISION AND ORDER

**The attached Stipulated Surrender of License and Order is hereby
adopted as the Decision and Order of the Medical Board of California,
Department of Consumer Affairs, State of California.**

This Decision shall become effective at 5:00 p.m. on September 28, 2018.

IT IS SO ORDERED September 21, 2018.

MEDICAL BOARD OF CALIFORNIA

By:


**Kimberly Kirchmeyer
Executive Director**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
Deputy Attorney General
4 State Bar No. 219400
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3374
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E-mail: Emily.Brinkman@doj.ca.gov
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2018-043774

13 **RICHARD L. ZAHN, M.D.**
14 1265 S. Pleasant View Rd.
Post Falls, ID 83854-6904

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Physician's and Surgeon's Certificate No. C**
16 **26179**

17 Respondent.

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19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Emily L. Brinkman,
25 Deputy Attorney General.

26 2. Richard L. Zahn, M.D. (Respondent) is representing himself in this proceeding and
27 has chosen not to exercise his right to be represented by counsel.
28

3. On or about July 1, 1964, the Board issued Physician's and Surgeon's Certificate No. C 26179 to Richard L. Zahn, M.D. (Respondent). The Certificate is renewed and current with an expiration date of January 31, 2020.

JURISDICTION

4. Accusation No. 800-2018-043774 was filed before the (Board), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 19, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2018-043774 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2018-043774. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2018-043774, agrees that cause exists for discipline and hereby surrenders his Physician's and Surgeon's Certificate No. C 26179 for the Board's formal acceptance.

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1 9. Respondent understands that by signing this stipulation he enables the Board to issue
2 an order accepting the surrender of his Physician's and Surgeon's Certificate without further
3 process.

4 CONTINGENCY

5 10. This stipulation shall be subject to approval by the Board. Respondent understands
6 and agrees that counsel for Complainant and the staff of the Board may communicate directly
7 with the Board regarding this stipulation and surrender, without notice to or participation by
8 Respondent. By signing the stipulation, Respondent understands and agrees that he may not
9 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers
10 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the
11 Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
12 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
13 be disqualified from further action by having considered this matter.

14 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
15 copies of this Stipulated Surrender of License and Order, including Portable Document Format
16 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

17 12. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the Board may, without further notice or formal proceeding, issue and enter the following Order:

19 ORDER

20 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 26179, issued
21 to Respondent Richard L. Zahn, M.D., is surrendered and accepted by the Medical Board of
22 California.

23 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
24 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
25 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
26 of Respondent's license history with the Medical Board of California.

27 2. Respondent shall lose all rights and privileges as a Physician and Surgeon in
28 California as of the effective date of the Board's Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2018-043774 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

9/14/18

RICHARD L. ZAHN, M.D.
Respondent

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

9/14/2018

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

EMILY L. BRINKMAN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2018-043774

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
Deputy Attorney General
4 State Bar No. 219400
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
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E-mail: Emily.Brinkman@doj.ca.gov
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 19 20 18
BY K. Voong ANALYST

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. 800-2018-043774

14 **Richard L. Zahn. M.D.**
1265 S. Pleasant View Road
15 Post Falls, ID 83854-6904

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. C 26179,**

Respondent.

18
19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs (Board).

25 2. On or about July 1, 1964, the Medical Board issued Physician's and Surgeon's
26 Certificate Number C 26179 to Richard L. Zahn. M.D. (Respondent). The Certificate is renewed
27 and current with an expiration date of January 31, 2020.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2305 of the Code states:

“The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.”

6. Section 141 of the Code states:

“(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

“(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.”

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CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

7. On April 12, 2018 the State of Washington, Medical Quality Assurance Committee (Washington Committee) entered into a Stipulation to Informal Disposition (Stipulation) with Respondent. The Stipulation was related to Respondent's work as the Medical Director of three medical spas where physician assistants, registered nurses, and aestheticians performed the majority of the procedures. Specifically, Respondent allowed an aesthetician to inject Botox and dermal fillers into a patient. Additionally, he allowed a physician assistant and registered nurse working under his supervision to inject Botox in non-FDA approved locations on the patient when Respondent was not on-site for the procedures. As part of the Stipulation, Respondent must complete a compliance orientation, personally appear before the Board, complete two hours of continuing medical education, and write a paper on the changes he has made to his practice. Copies of the Washington Committee Stipulation to Informal Disposition and Statement of Allegations and Summary of Evidence are attached as Exhibit A.

8. Respondent's conduct and the action of the Washington Committee as set forth in paragraph 7, above, and within the actual Washington Committee documents attached as Exhibit A, constitute unprofessional conduct within the meaning of section 2305 and conduct subject to discipline within the meaning of section 141(a).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 26179, issued to Richard L. Zahn. M.D.;

2. Revoking, suspending or denying approval of Richard L. Zahn. M.D.'s authority to supervise physician assistants and advanced practice nurses;

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1 3. Ordering Richard L. Zahn, M.D., if placed on probation, to pay the Board the costs of
2 probation monitoring; and

3 4. Taking such other and further action as deemed necessary and proper.
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5 DATED:

6 July 19, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A

State of Washington Medical Quality Assurance Committee Stipulation to Informal
Disposition, Statement of Allegations and Summary of Evidence

**STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice
as a Physician and Surgeon of:

RICHARD L. ZAHN, MD
License No. MD.00036971

No. M2017-55

**STIPULATION TO INFORMAL
DISPOSITION**

Respondent:

Pursuant to the Uniform Disciplinary Act, Chapter 18.130 RCW, the Medical Quality Assurance Commission (Commission) issued a Statement of Allegations and Summary of Evidence (Statement of Allegations) alleging the conduct described below. Respondent does not admit any of the allegations. This Stipulation to Informal Disposition (Stipulation) is not formal disciplinary action and shall not be construed as a finding of unprofessional conduct or inability to practice.

1. ALLEGATIONS

1.1 On January 13, 1999, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent is board certified in general surgery. Respondent's license is currently active.

1.2 For all times relevant herein, Respondent served as the Medical Director for three (3) medical spas located in Washington.

1.3 The medical spas provided a variety of skin services including laser treatments, injections of BOTOX Cosmetic (onabotulinumtoxinA) and dermal fillers for cosmetic purposes. Staff at the medical spas performed the majority of the procedures and included physician assistants and registered nurses.

1.4 In 2010, the Commission adopted WAC 246-919-606(1.1). This rule allows physicians to delegate the performance of nonsurgical cosmetic procedures to certain physician assistants, registered nurses or licensed practical nurses. For delegation to physician assistants, registered nurses and licensed practical nurses, if the medication or substance has not been approved by the FDA for the particular purpose for which it is being used, the physician must be present on-site for the duration of the procedure.

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1.5 Prior to September 2013, BOTOX Cosmetic was approved by the United States Food and Drug Administration (FDA) for "temporary improvement in the appearance of moderate to severe glabellar lines associated with corrugator and/or procerus muscle activity in adult patients." These lines are commonly known as frown lines and appear between an individual's eyebrows.

1.6 Beginning in September 2013, BOTOX Cosmetic was also approved by the United States Food and Drug Administration (FDA) for "temporary improvement in the appearance of moderate to severe lateral canthal lines associated with orbicularis oculi activity in adult patients." These lines are commonly known as crow's feet and appear on the skin adjacent to an individual's eyes.

1.7 Between approximately July 2014 and January 2016, a physician assistant and registered nurse working under Respondent's supervision at the medical spas injected Patients B-L with BOTOX Cosmetic on approximately 20 visits without Respondent being on-site for the procedure. None of these treatments were within the scope of the FDA-approved use of BOTOX Cosmetic at the time they occurred although the FDA has subsequently approved the uses.

2. STIPULATION

2.1 The Commission alleges that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(7) based on WAC 246-919-606(12).

2.2 The parties wish to resolve this matter by means of a Stipulation to Informal Disposition (Stipulation) pursuant to RCW 18.130.172(1).

2.3 Respondent agrees to be bound by the terms and conditions of this Stipulation.

2.4 This Stipulation is of no force and effect and is not binding on the parties unless and until it is accepted by the Commission.

2.5 If the Commission accepts the Stipulation it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center and elsewhere as required by law.

2.6 The Statement of Allegations and this Stipulation are public documents. They will be placed on the Department of Health website, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). They are subject to disclosure under the Public

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Records Act, Chapter 42.56 RCW, and shall remain part of Respondent's file according to the state's records retention law and cannot be expunged.

2.7 The Commission agrees to forego further disciplinary proceedings concerning the allegations.

2.8 Respondent agrees to successfully complete the terms and conditions of this informal disposition:

2.9 A violation of the provisions of Section 3 of this Stipulation, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

3. INFORMAL DISPOSITION

The Commission and Respondent stipulate to the following terms:

3.1 Compliance Orientation. Respondent shall complete a compliance orientation in person or by telephone within sixty (60) days of the effective date of this Stipulation. Respondent must contact the Compliance Unit at the Commission by calling (360) 236-2763, or by sending an email to: Medical.compliance@doh.wa.gov within twenty (20) days of the effective date of this Stipulation. Respondent must provide a contact phone number where Respondent can be reached for scheduling purposes.

3.2 Personal Appearances. Respondent must personally appear at a date and location determined by the Commission in approximately nine (9) months after the effective date of this Stipulation, or as soon thereafter as the Commission's schedule permits. Thereafter, Respondent must make personal appearances annually or as frequently as the Commission requires unless the Commission waives the need for an appearance. Respondent must participate in a brief telephone call with the Commission's Compliance Unit prior to the appearance. The purpose of appearances is to provide meaningful oversight over Respondent's compliance with the requirements of this Stipulation. The Commission will provide reasonable notice of all scheduled appearances.

3.3 CME. Within three (3) months of the effective date of this Stipulation, Respondent shall complete at least two (2) hours of continuing medical education regarding the use of neuromuscular blocking agents. Medical education completed remotely and not in-person shall be acceptable in fulfilling this requirement.

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3.4 **Paper.** Respondent shall submit a typewritten paper discussing modifications he has made to his practice to prevent a reoccurrence of the events described in Section 1. The paper must be a minimum of one thousand (1,000) words and contain a bibliography. The paper must be completed and submitted within one (1) month of the completion of the CME agreed to under Paragraph 3.3. Respondent should be prepared to discuss the subject matter of his paper with the Commission at his first personal appearance. The paper shall be submitted to the Commission, in both electronic and printed format, to the addresses below:

1. Medical.compliance@doh.wa.gov
2. Compliance Officer
Medical Quality Assurance Commission
P.O. Box 47866
Olympia, Washington 98504-7866

3.5 **Cost Recovery.** Respondent shall pay one thousand dollars (\$1,000) to the Commission as partial reimbursement of some of the costs of investigating and processing this matter. Payment must be by certified or cashier's check made payable to the Commission, and must be received by the Department of Health within ninety (90) days of the effective date of this Stipulation. Respondent must send payment to:

Medical Quality Assurance Commission
Department of Health
P.O. Box 1099
Olympia, Washington 98501-1099

3.6 **Obey Laws.** Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

3.7 **Costs.** Respondent must assume all costs of complying with this Stipulation.

3.8 **Violations.** If Respondent violates any provision of this Stipulation in any respect, the Commission may initiate further action against Respondent's license.

3.9 **Change of Address.** Respondent must inform the Commission and the Adjudicative Clerk Office in writing, of changes in his residential and/or business address within thirty (30) days of such change.

3.10 Effective Date. The effective date of this Stipulation to Informal Disposition is the date the Adjudicative Clerk Office places the signed Stipulation into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Stipulation.

3.11 Termination of Stipulation. Respondent may petition the Commission in writing to terminate this Stipulation after one (1) year from its effective date. Upon a written petition to terminate, Respondent shall appear in person before the Commission at a date and location designated by the Commission unless otherwise waived by the Commission. An appearance on a petition to terminate may be combined with a required annual personal appearance. The Commission shall have full discretion to grant or deny the petition. If the Commission denies the petition, Respondent may petition again annually or at an interval otherwise determined by the Commission.

4. COMPLIANCE WITH SANCTION RULES

4.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions, including stipulations to informal disposition under RCW 18.130.172. Tier A of the "Practice Below Standard of Care" schedule, WAC 246-16-810, applies to cases where substandard practices caused no or minimal patient harm or risk of patient harm. Here, Respondent failed to adequately supervise staff under his supervision and failed to remain updated on the applicable law and rule governing the use of BOTOX Cosmetic. There were no reported injuries to patients as a result and the risk to patients was comparatively low.

4.2 Tier A requires the imposition of sanctions ranging up to three years of oversight. Under WAC 246-16-800(3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

4.3 While the ultimate duration of this Stipulation is undetermined – giving the Commission the discretion to lengthen the period of oversight if protection of public health and safety requires – it may be terminated after one year. That would potentially place the duration at the shorter end of the range. Here, the Commission noted Respondent's cooperation with the investigation and no reported incidents of patient

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harm. These mitigating factors warrant a possibly shorter period of oversight. The Commission noted no aggravating factors.

5. RESPONDENT'S ACCEPTANCE

I, RICHARD L. ZAHN, MD, Respondent, certify that I have read this Stipulation to Informal Disposition in its entirety; that my counsel of record has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulation to Informal Disposition, I understand that I will receive a signed copy.

Richard L. Zahn M.D.
RICHARD L. ZAHN, MD
RESPONDENT

3/30/18
DATE

DJE
D. JEFFREY BURNHAM, WSBA NO. 22679
ATTORNEY FOR RESPONDENT

4-4-18
DATE

6. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation to Informal Disposition. All parties shall be bound by its terms and conditions.

DATED: 4-12 2018.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

[Signature]
PANEL CHAIR

I declare that this is a true and accurate copy of the original on file with the Washington State Department of Health, Medical Quality Assurance Commission

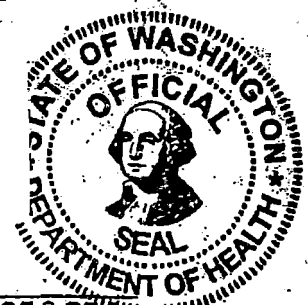
Michael J. Kramer
Michael J. Kramer

5-11-18
Date

PRESENTED BY:

Ka S.K.
KYLE KARINEN, WSBA NO. 34910
COMMISSION STAFF ATTORNEY

STIPULATION TO INFORMAL DISPOSITION
NO. M2017-55



PAGE 6 OF 8

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STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION **FILED**

In the Matter of the License to Practice
as a Physician and Surgeon of:

RICHARD L. ZAHN, MD
License No. MD00036971

Respondent.

No. M2017-55

APR 12 2018

**STATEMENT OF ALLEGATIONS
AND SUMMARY OF EVIDENCE**

Adjudicative Clerk Office

The Executive Director of the Medical Quality Assurance Commission (Commission), on designation by the Commission, makes the allegations below, which are supported by evidence contained in Commission file number 2015-11893. The patients referred to in this Statement of Allegations and Summary of Evidence are identified in the attached Confidential Schedule.

1. ALLEGATIONS

1.1 On January 13, 1999, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent is board certified in general surgery. Respondent's license is currently active.

1.2 For all times relevant herein, Respondent served as the Medical Director for three (3) medical spas located in Washington.

1.3 The medical spas provided a variety of skin services including laser treatments, injections of BOTOX Cosmetic (onabotulinumtoxinA¹) and dermal fillers² for cosmetic purposes. Staff at the medical spas performed the majority of the procedures and included physician assistants, registered nurses and estheticians.

1.4 In 2010, the Commission adopted WAC 246-919-606(11) and (12). This rule allows physicians to delegate the performance of nonsurgical cosmetic procedures³

¹ OnabotulinumtoxinA is commonly known by its respective brand names, BOTOX and BOTOX Cosmetic. BOTOX and BOTOX Cosmetic are the same drug, but the manufacturer distributes using two different sets of dosage instructions.

² Dermal fillers are injected subcutaneously to provide volume and/or contouring of facial features; including diminishing wrinkles.

³ "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used

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to certain physician assistants, registered nurses or licensed practical nurses. Estheticians are not permitted to perform nonsurgical cosmetic procedures. Additionally, for delegation to physician assistants, registered nurses and licensed practical nurses, if the medication or substance has not been approved by the FDA for the particular purpose for which it is being used, the physician must be present on-site for the duration of the procedure.

Supervision of estheticians

1.5. Between approximately December 2014 and September 2016, an esthetician working under Respondent's supervision at the medical spas injected Patient A with BOTOX Cosmetic and dermal fillers in violation of WAC 246-919-606(12).

Supervision of physician assistant and registered nurses

1.6 Prior to September 2013, BOTOX Cosmetic was approved by the United States Food and Drug Administration (FDA) for "temporary improvement in the appearance of moderate to severe glabellar lines associated with corrugator and/or procerus muscle activity in adult patients." These lines are commonly known as frown lines and appear between an individual's eyebrows.

1.7 Beginning in September 2013, BOTOX Cosmetic was also approved by the United States Food and Drug Administration (FDA) for "temporary improvement in the appearance of moderate to severe lateral canthal lines associated with orbicularis oculi activity in adult patients." These lines are commonly known as crow's feet and appear on the skin adjacent to an individual's eyes.

1.8 Between approximately February 2013 and January 2016, a physician assistant and registered nurse working under Respondent's supervision at the medical spas injected Patients B-L with BOTOX Cosmetic on approximately 52 visits without Respondent being on-site for the procedure. None of these treatments were within the scope of the FDA-approved use of BOTOX Cosmetic at the time they occurred.

2. SUMMARY OF EVIDENCE

2.1 Treatment records for Patients A-L

2.2 Respondent's statement to the Commission dated October 27, 2015

for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125. WAC 246-919-606(3)(a).

3. ALLEGED VIOLATIONS

3.1 The facts alleged in Section 1, if proven, would constitute unprofessional conduct in violation of RCW 18.130.180(7) based on WAC 246-919-606(11) and (12) which provide in part:

RCW 18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

...

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

...

WAC 246-919-606 Nonsurgical medical cosmetic procedures.

...

(11) A physician who meets the above requirements may delegate a nonsurgical medical cosmetic procedure to a properly trained physician assistant, registered nurse or licensed practical nurse, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) The physician delegates procedures that are within the delegate's lawful scope of practice;

(c) The delegate has appropriate training in, at a minimum:

(i) Techniques for each procedure;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for each procedure;

(iv) Preprocedural and postprocedural care;

(v) Recognition and acute management of potential complications that may result from the procedure; and

(vi) Infectious disease control involved with each treatment.

(d) The physician has a written office protocol for the delegate to follow in performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(i) The identity of the physician responsible for the delegation of the procedure;

(ii) Selection criteria to screen patients for the appropriateness of treatment;

(iii) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(iv) A statement of the activities, decision criteria, and plan the delegate shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(e) The physician ensures that the delegate performs each procedure in accordance with the written office protocol;

(f) Each patient signs a consent form prior to treatment that lists foreseeable side effects and complications, and the identity and license of the delegate or delegates who will perform the procedure; and

(g) Each delegate performing a procedure covered by this section must be readily identified by a name tag or similar means so that the patient understands the identity and license of the treating delegate.

(12) If a physician delegates the performance of a procedure that uses a medication or substance that the federal Food and Drug Administration has not approved, or that the federal Food and Drug Administration has not approved for the particular purpose for which it is used, the physician must be on-site during the entire duration of the procedure.

4. NOTICE TO RESPONDENT

4.1 The Commission has determined that this case may be appropriate for resolution through a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2). A proposed Stipulation to Informal Disposition is attached, which contains the disposition the Commission believes is necessary to address the conduct alleged in this Statement of Allegations and Summary of Evidence.

4.2 If Respondent agrees that the disposition imposed by the Stipulation to Informal Disposition is appropriate, Respondent should sign and date the Stipulation to Informal Disposition and return it within twenty-eight (28) days to the Medical Quality Assurance Commission at P.O. Box 47866, Olympia, Washington 98504-7866.

4.3 If Respondent does not agree that the terms and conditions contained in the Stipulation to Informal Disposition are appropriate, Respondent should contact Kyle Karinen, Staff Attorney for the Medical Quality Assurance Commission, P.O. Box 47866, Olympia, Washington 98504-7866, (360) 236-4810 within twenty-eight (28) days.

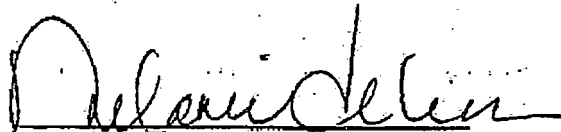
4.4 If Respondent does not respond within twenty-eight (28) days, the Commission will assume Respondent has declined to resolve the allegations by means of a Stipulation to Informal Disposition.

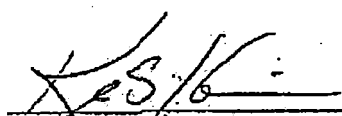
4.5 If Respondent declines to resolve the allegations by means of a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2), the Commission may proceed to formal disciplinary action against Respondent by filing a Statement of Charges, pursuant to RCW 18.130.172(3).

4.6 The cover letter enclosed with this Statement of Allegations and Summary of Evidence was mailed to the name and address currently on file for Respondent's license. Respondent must notify, in writing, the Commission if Respondent's name and/or address changes.

DATED: October 17, 2017.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE
COMMISSION


MELANIE DE LEON
EXECUTIVE DIRECTOR


KYLE KARINEN WSBA NO. 34910
COMMISSION STAFF ATTORNEY

I declare that this is a true and accurate copy of the original on file
with the Washington State Department of Health,
Medical Quality Assurance Commission


Michael J. Kramer

5-11-18
Date



ORIGINAL

CONFIDENTIAL SCHEDULE

This information is confidential and is NOT to be released without the consent of the individual or individuals named herein. RCW 42.56.240(1)

Patient A

Patient B

Patient C

Patient D

Patient E

Patient F

Patient G

Patient H

Patient I

Patient J

Patient K

Patient L